Nos. 09-1454 and 09-1478

In the Supreme Court of the United States

BOB CAMRETA, PETITIONER

v.

SARAH GREENE, PERSONALLY AND AS A NEXT FRIEND FOR S.G., A MINOR, AND K.G., A MINOR, RESPONDENT

(ADDITIONAL CAPTION ON REVERSE)

On Writ Of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR CENTER FOR LAW AND EDUCATION, LEARNING RIGHTS LAW CENTER, CHICAGO COALITION FOR THE HOMELESS, PACER CENTER, AND PARENTS UNITED FOR RESPONSIBLE EDUCATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTRODUCTION AND INTERESTS OF *AMICI CURIAE*

The Center for Law and Education, Learning Rights Law Center, Chicago Coalition for the Homeless, PACER Center, and Parents United for Responsible Education respectfully submit this brief *amicus curiae* to highlight the ways in which public schools, as such, are not appropriate environments for conducting custodial police/child protective services ("CPS") interrogations of children.[1] From their vantage point as organizations that work with families, schools, and community organizations to ensure that all children have access to high-quality education, *amici* are in a unique position to provide insight into the important relationships and educational issues at stake in the case.

Petitioners and their supporting *amici* would have this Court expand the scope of the school-based "special needs" exception to the Fourth Amendment's search and seizure requirements (*New Jersey* v. *T.L.O.*, 469 U.S. 325 (1985)) to reach any encounter a schoolchild has with a government official on school grounds, even if that encounter has nothing to do with education. Effectively, they hope this Court will permit law enforcement officers and CPS workers to bypass traditional Fourth Amendment protections whenever they conduct custodial police/CPS

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[1] Counsel for all parties have consented to the filing of this brief. Letters evidencing consent are on file with the Clerk. Pursuant to S. Ct. R. 37.6, *amici curiae* certify that no counsel for a party to this action authored any part of this brief, nor did any person or entity, other than the *amici*, their members, or their counsel make a monetary contribution to fund the preparation or submission of this brief.

investigations in schools. This effort finds no support in *T.L.O.* and its progeny.

Moreover, this effort is bad for education and bad for students. Sanctioning school-based, custodial police/CPS interrogations absent a warrant or court order, exigent circumstances, or parental consent will negatively affect the school environment by threatening the relationships between educators, students, and parents, and by traumatizing children in what should be a safe and nurturing environment.

The ***Center for Law and Education, Inc.*** ("CLE") is a national non-profit advocacy organization with offices in Boston and Washington, D.C., that works with parents, advocates, and educators to improve the quality of education for all students, and in particular, indigent students. One of a few national organizations rooted in both civil rights and school reform, CLE is focused on bringing the two together to address systemic barriers that impede low-income students, who are disproportionately students of color and students with disabilities, from accessing a rigorous curriculum aligned to state standards through effective instruction from qualified teachers. In working to remove such barriers, it is critical that students from protected groups are not denied access to learning by constructive exclusion from school through inappropriate programming and services, or by constructive expulsion through abusive disciplinary or other unlawful practices. CLE seeks to ensure that students who are entitled to services under Title I of the Elementary and Secondary Education Act ("ESEA") and the Individuals with Disabilities Education Act ("IDEA") remain in school and receive an appropriate, quality education

designed to prepare them for post-secondary education and employment.

Through its role with the American Bar Association's Commission on Youth at Risk, CLE took the lead in developing three formal resolutions, along with extensive accompanying reports, that were adopted by the ABA House of Delegates in 2009. The resolutions promote a variety of coordinated actions to advance the educational rights of all children, namely: (1) the right to a high-quality education program; (2) the right to remain in school; and (3) the right to resume a high-quality education program, for students who have left school.

The ***Learning Rights Law Center*** ("LRLC") is a Los Angeles-based non-profit organization with a mission to ensure that students have equitable access to the public education system. LRLC focuses its efforts on students with learning disabilities or difficulties, students involved or at risk of becoming involved in the child welfare and/or juvenile justice systems, and students not accessing the public school system because of disability, homelessness, or other factors. LRLC advocates for justice in education through a variety of initiatives on behalf of low-income students, including parent training and organizing, administrative hearings, and civil litigation. LRLC advocates for system change through training probation officers, social workers, teachers, administrators, and other professionals working with high-risk students not accessing the public school system.

The ***Chicago Coalition for the Homeless*** ("CCH") is a community-based non-profit Illinois corporation whose mission is to understand and address the

problem of homelessness throughout Illinois and most particularly in the Chicago metropolitan area. Much of CCH's work focuses on the needs of families and children who live in extreme poverty and suffer the experience of homelessness. CCH is especially concerned about accessing quality pre-school, elementary, secondary, and post-secondary education for homeless children and youth as a key to alleviating their intense poverty.

For more than thirty years, CCH has worked extensively with homeless parents, school staff, and administrators to ensure that the educational rights of homeless students are respected and implemented, including ensuring that these often-traumatized children and youth are well-treated and not stigmatized or segregated in their school environment. CCH staff have published and generated numerous articles and training materials in this field, including, most recently, co-authoring an American Bar Association publication, EDUCATING CHILDREN WITHOUT HOUSING: A PRIMER ON LEGAL REQUIREMENTS AND IMPLEMENTATION STRATEGIES FOR EDUCATORS, ADVOCATES AND POLICYMAKERS (3d ed. 2009). CCH's Law Project regularly represents homeless children and youth in administrative hearings and litigation and advocates to secure their basic needs, including educational needs.

PACER Center is a parent training and information center for families of children and youth with all disabilities, from birth through 21 years old. Located in Minneapolis, it serves families across the nation. Parents can find publications, workshops, and other resources to help make decisions about

education, vocational training, employment, and other services for their children with disabilities.

The mission of PACER Center is to expand opportunities and enhance the quality of life of children and young adults with disabilities and their families, based on the concept of parents helping parents. PACER Center is unique in that it serves children with *all* disabilities: learning, physical, emotional, mental, and health. PACER also works in coalition with 18 disability organizations.

Parents United for Responsible Education ("PURE") is a non-profit membership organization and nationally recognized public school parent advocacy group. Based in Chicago, PURE strives to build support for and enhance the quality of public education in the city of Chicago and across the United States by informing parents about educational issues, bringing the views of parents into the school decision-making process, and acting as an advocate for parents in their relationships with school administration.

Collectively, *amici* have a substantial interest in the issue now before the Court, as advocates for the rights of children generally, and specifically as advocates for children and families in public schools. *Amici* have extensive experience working with schools, identifying best practices, and advocating for reform in order to ensure that schools are providing the best education possible to all students, including those children who are more vulnerable for reasons such as homelessness or disability.

BACKGROUND

This is a case about a nine-year-old girl, S.G., who was unexpectedly pulled out of her classroom at public school by an administrator, and then put in a conference room near the principal's office with two adult males she did not know—a uniformed law enforcement officer with a visible firearm, and a CPS caseworker. Br. for Resp'ts at 1-2, *Camreta* v. *Greene* and *Alford* v. *Greene*, Nos. 09-1454 and 09-1478 (Jan. 24, 2011). S.G. was not told why she was taken to this room, and she was afraid. *Id.* at 2. Neither of the men knew that S.G. suffered from developmental delays related to speech, verbal reasoning, and overall reasoning, and that she received special education services for her "communication disorder." *Id.* at 3.

Over the course of two hours (a period during which S.G. would otherwise have been in class), S.G. was interrogated by the CPS worker about alleged sexual abuse by her father. The law enforcement officer and the CPS worker had not obtained a court order or warrant allowing them to interview S.G. *Id.* at 3 n.4. Nor did they obtain parental consent before effecting the seizure of this young child; indeed, they did not even inform S.G.'s parents that they would be talking to her at school. *Id.* at 2-3. And this was not an emergency situation in the CPS worker's view: he had learned of the allegations three or four days before showing up at S.G.'s school to interrogate her. *Id.* at 2.

During the two-hour seizure, S.G. believed (correctly) that she was not free to leave without the permission of the two adult strangers. *Id.* at 4. She was asked the same question over and over: whether

some of her father's touches "were bad touches." *Id.* at 3. She repeatedly answered "no," to the dissatisfaction of the CPS worker, who responded, "No that's not it." She was told things about child sexual abuse that she had never heard before. *Ibid.*

Afraid that the school bus she could see out the window would leave without her at the end of the day, S.G. decided to lie in order to get out of the confined room and the uncomfortable situation. *Id.* at 3-4. She told the officer and the CPS worker what she thought they wanted to hear—"yes" to the "bad touch" questions—and then was allowed to leave. *Id.* at 4. S.G. was clearly traumatized by the interrogation: later that night S.G. could not eat dinner and vomited five times. *Ibid.*

The trauma to S.G. continued, as she and her sister were removed from their home and placed in foster care for three weeks. *Id.* at 11. Forensic interviews and physical examinations by specially trained professionals revealed no evidence that either S.G. or her sister had been abused. *Ibid.* Ultimately, the charges filed against S.G.'s father were dropped, and S.G. and her sister were allowed to return home. *Id.* at 12.

SUMMARY OF ARGUMENT

Petitioners urge the Court to hold, among other things, that the public school is a place in which already vulnerable individuals—children—have a reduced expectation of privacy over *all* aspects of their lives, irrespective of any nexus to education. Br. for Pet'r James Alford at 50-53, *Alford* v. *Greene*, No. 09-1478 (Dec. 10, 2010); Br. for Pet'r Bob Camreta at 30-34, *Camreta* v. *Greene*, No. 09-1454 (Dec. 9, 2010).

In doing so, Petitioners ignore the fundamental purpose of the school-based "special needs" exception to the Fourth Amendment—*T.L.O.*, 469 U.S. 325, and its progeny—which is to ensure that school personnel are able to carry out the educational mission of schools while maintaining discipline, order, and safety in the schoolhouse. *T.L.O.* did not diminish children's constitutional rights in general, nor did it authorize government intrusion for any and all purposes based simply on a child's physical presence in the school building.

In evaluating Petitioners' efforts to make the public school a place in which student privacy interests are significantly compromised for purposes of custodial police/CPS interrogations, *amici* respectfully request that the Court take into account the characteristics of public schools that counsel *against* using them as outposts for this purpose, absent a warrant or court order, parental consent, or exigent circumstances. Additionally, *amici* highlight negative implications of using public schools for this purpose.

First, the mission of schools differs from the mission of law enforcement and CPS. Regular use of public schools for custodial police/CPS interrogations threatens the mission of public schools, as well as the relationships that are essential to a positive school environment and high-quality education for students.

Second, although schools are generally considered safe environments in which children receive nurturing, guidance, and support from teachers and administrators, certain inherent aspects of the school environment elevate the risk that custodial police/CPS interrogations (i) will be traumatizing for

the child, and (ii) will result in the child's providing inaccurate information to questioners.

Third, warrantless, non-exigent custodial police/CPS interrogations keep parents from doing what they normally have the right to do under state legislation and school board policies—oversee, and to some extent approve, what their children are exposed to at school. Parents do not and need not expect a wholesale surrender of their rights to exercise care, custody, and control over their children during school hours. As a result, the changes Petitioners advocate can threaten relationships between schools and parents, to the detriment of student learning.

Finally, if this Court sanctions the use of public schools for warrantless, non-exigent custodial police/CPS interrogations—that is, if this Court accepts the idea that children have reduced Fourth Amendment protections when on school grounds even for government purposes unrelated to school—law enforcement officers and CPS workers will have increased incentives to conduct interrogations of children on school grounds for the sake of convenience, bypassing the traditional constitutional requirement of a warrant based on probable cause.

For all these reasons, *amici* urge this Court to reject Petitioners' view and maintain the constitutional rights of children in public schools.

ARGUMENT

I. *T.L.O.* Did Not Make Public Schools Environments Of Reduced Privacy Rights In The Name Of Any Governmental Interest

The limited exception to traditional Fourth Amendment protections enunciated in *T.L.O.* exists

to allow *school personnel* to carry out the school's educational mission. 469 U.S. 325. It is not a blanket rule that provides reduced constitutional protections whenever the government acts on school grounds—especially not when the government action results in the interrogation of a young child in the presence of police officers about sensitive topics unrelated to the child's education. In fact, in *T.L.O.*, the Court expressly declined to consider the proper standard for searches carried out by parties other than, or in addition to, school personnel:

> We here consider only searches carried out by school authorities *acting alone and on their own authority*. This case does not present the question of the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies, and we express no opinion on that question.

Id. at 342 n.7 (emphasis added).

In *T.L.O.*, the Court explained that the *school's* "legitimate need to maintain an environment in which learning can take place" must be balanced with the "schoolchild's legitimate expectations of privacy." *Id.* at 340. The balance the Court struck with the school-based special needs standard[2] is meant to ensure "that the interests of students will

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[2] The reasonableness of a Fourth Amendment search or seizure within the school setting, as dictated by the Court, depends on whether it was "justified at its inception" and "reasonably related in scope to the circumstances which justified the interference in the first place." *Id.* at 341.

be invaded no more *than is necessary to achieve the legitimate end of preserving order in the schools.*" *Id.* at 343 (emphasis added). Accordingly, *T.L.O.*'s narrow exception to Fourth Amendment protections is properly tailored to enable school authorities to carry out educational purposes and maintain discipline, order, and school safety.

None of these educational concerns was present in S.G.'s case. Nor was there any emergency: CPS did not act until three or four days after it was given information about S.G.'s alleged abuse. Instead of following the proper procedures—demonstrating probable cause to obtain a court order or warrant—the CPS worker brought a law enforcement officer with a visible, holstered weapon to the child's school and interrogated the child for two hours on matters unrelated to school.

There is a critical difference between school personnel acting alone, in the interest of the proper education of their students (the subject of *T.L.O.* and other cases in its vein) and school personnel acting alongside police officers or social workers to carry out objectives external to children's education. In the context of public school, the special needs exception relates to the special educational needs of administrators and teachers to teach students and maintain order in the schoolhouse. This Court should continue to recognize this essential limitation.

II. Custodial Police/CPS Interrogations On School Grounds Are Inconsistent With, And Disruptive Of, The Mission And Function Of Public Schools

Using public schools to conduct warrantless, custodial police/CPS interrogations of children cuts

against the mission of public schools, threatens important relationships between educators, students, and parents, and disrupts student learning.

A. Allowing interrogations like S.G.'s is inconsistent with public schools' interests in maintaining positive and trusting relationships with students and parents.

As the California State Association of Counties points out, teachers "are not trained child abuse investigators or interviewers. That's not their job. It's the job of social workers and police officers."[3] The *amici* represented here agree: It is absolutely not the job of school teachers to investigate criminal allegations of abuse and neglect. To take this argument one logical step further, the schoolhouse is not an appropriate place for custodial police/CPS interrogations.

The mission of public education is not one and the same as the mission of law enforcement or CPS—even though all three government divisions undoubtedly prioritize the safety and wellbeing of children. Schools exist to educate—to equip children with knowledge and skills so they can lead independent lives as contributing members of society. The core responsibilities of public schools "include the development of intellectual skills and literacy training, socialization, citizenry preparation to

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[3] Br. for Cal. State Ass'n of Counties *et al.* as *Amici Curiae* In Support of Petitioners' Writ of *Certiorari*, *Camreta* v. *Greene*, No. 09-1454 (July 1, 2010), 2010 WL 2665553, *17.

ensure the effective functioning of democracy, and the inculcation of community values."[4]

The public schools' mission as dictated by pedagogical need and federal policy and law includes addressing the needs of a wide array of students who have difficulties which impact their ability to learn. This array includes, among others, students with disabilities and students experiencing homelessness or poverty or violence, for whom the imposition of a law enforcement interrogation runs counter to effective education strategies. Indeed, for children who arrive at school with histories of trauma,[5] such as those experiencing homelessness, additional stress may fracture their ability to have a positive experience at school.[6] Creating daily routines, predictable and safe adult interactions, caring support, positive behavioral and academic expectations, safe and age-appropriate space, and distraction from traumatizing events are all important to promoting effective learning.[7]

On the other hand, the objectives of law enforcement and CPS workers in conducting

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[4] 1 Ronna Greff Schneider, EDUCATION LAW: FIRST AMENDMENT, DUE PROCESS AND DISCRIMINATION LITIG. § 2.3 (1st ed. 2010).

[5] National Center on Family Homelessness, Fact Sheet on Children, http://www.familyhomelessness.org/children.php?p=ts (last visited Jan. 26, 2011) (referring to the "barrage of stressful and traumatic experiences" of homeless children and youth and noting "profound effects" on development and learning).

[6] *Ibid.*

[7] ELLEN L. BASSUK, M.D., *ET AL.*, THE NATIONAL CENTER ON FAMILY HOMELESSNESS, UNDERSTANDING TRAUMATIC STRESS IN CHILDREN, 3-5 and 7-11 (2006), http://www.familyhomelessness.org/media/91.pdf.

interrogations on school grounds differ significantly from those of educators. At a basic level, law enforcement and CPS workers are questioning children about incredibly personal, likely traumatizing events (whether true or not) in a manner they hope will elicit detailed and extensive information. In S.G.'s case, the questioning was relentless and aggressive. The result can be traumatizing for a child, as it was for S.G. This, in turn, can significantly impair the relationship between students and school personnel who subjected the students to the school-based interrogation in the first place.

The relationship between educators and students is a special one. As recognized by the Ninth Circuit:

> [P]ublic schools have a relationship with their students that is markedly different from the relationship between most governmental agencies, including [Child Protective Services], and the children with whom they deal. Constitutional claims based on searches or seizures by public school officials relating to public school students therefore call for an analysis * * * that is different [from that for searches or seizures by caseworkers].

Greene v. *Camreta*, 588 F.3d 1011, 1024 (9th Cir. 2009) (quoting *Tenenbaum* v. *Williams*, 193 F.3d 581, 607 (2d Cir. 1999)).

As Justice Powell noted in his *T.L.O.* concurrence, there is a markedly different relationship between school authorities and students than between students and law enforcement. While the former have

a "commonality of interests," the latter are more likely to have an adversarial relationship. 469 U.S. at 349-50 (Powell, J., concurring). Positive and supportive relationships between teachers and students are an important factor associated with higher student achievement and psychological well-being.[8] When students feel connected to their school environment and believe that their teachers "care about their learning and about them as individuals," the students are more likely to experience academic success and less likely to engage in behaviors such as substance abuse, attempted suicide, truancy, fighting, bullying, and vandalism.[9]

Indeed, the rule Petitioners seek may have negative effects even with respect to preventing and stopping child abuse. As many of the briefs to the Court explain, teachers and educators are "mandatory reporters," which means that they must contact CPS if they have reason to suspect child abuse. As a general principle, we as a society *want* children to talk to their teachers and school administrators when they are in trouble or facing dangers, and to trust teachers with sensitive and even potentially parent-incriminating information. Keeping custodial police/CPS investigations away from the school setting will help preserve the special, trusting relationship between children and their

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[8] Shannon Suldo *et al*, *Associations Between Student-Teacher Relations and Students' Academic and Psychological Well-Being*, 37 NASP COMMUNIQUÉ 14, 15 (Oct. 2008).

[9] Robert W. Blum, *A Case for School Connectedness*, 62 EDUC. LEADERSHIP 16, 16-17 (Apr. 2005).

educators that protects and benefits children.[10] If a child's conversation with a teacher about possible abuse results in CPS and police officers arriving *at the school* to conduct a disruptive, embarrassing, and/or traumatizing custodial interrogation, the child may be deterred from seeking help from school personnel. *Amici* believe that it is in a child's best interest that she trust her teachers and school administrators enough to talk with them openly about harmful events that are happening outside of school, without fear that such disclosure will change her *school* experience as a result of a police-accompanied CPS investigation *at school* about her home life.

Perhaps equally as important as the relationship between schools and students is the relationship between schools and parents. In carrying out their educational functions, schools interact regularly with parents *as allies*, recognizing that parental involvement contributes to a nurturing and productive school community,[11] as well as improved student performance.[12] Conversely, where trust between parents and educators is compromised, student learning suffers.[13] A lack of trust in the

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[10] Suldo, *supra* note 8, at 15; ANTHONY S. BRYK AND BARBARA SCHNEIDER, TRUST IN SCHOOLS: A CORE RESOURCE FOR IMPROVEMENT 31 (American Sociological Ass'n 2002).

[11] Anthony S. Bryk and Barbara Schneider, *Trust in Schools: A Core Resource for School Reform*, 60 EDUC. LEADERSHIP 40, 43 (March 2003).

[12] PAUL E. BARTON AND RICHARD J. COLEY, EDUCATIONAL TESTING SERVICE, PARSING THE ACHIEVEMENT GAP II 18 (2009), http://www.ets.org/Media/Research/pdf/PICPARSINGII.pdf.

[13] Bryk & Schneider, *supra* note 11, at 41-44.

school environment harms the educational success of children—especially children who are most at risk for educational failure.[14]

When law enforcement and CPS conduct custodial interrogations on school grounds, they are investigating allegations that are typically *against* parents. When the school acquiesces in such interrogations absent a warrant, court order, or exigent circumstances, and fails to seek parental consent, this could alienate parents from their children's schools and deter parents' oversight and involvement in their children's education, to the detriment of student learning.

B. Allowing the classroom to be disrupted for purposes unrelated to education will have a negative impact on learning.

The actual and potential disturbance of custodial police/CPS interrogations cannot be overlooked. As educators well know, disruptions in the school environment can significantly interfere with student learning.[15] The National Schools Boards Association acknowledges this: It generally "oppose[s] any

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[14] *Id.* at 41, 43; Norris M. Haynes *et al.*, *It Takes a Whole Village: The SDP School*, in RALLYING THE WHOLE VILLAGE: THE COMER PROCESS FOR REFORMING EDUCATION 42, 50-52 (James P. Comer *et al.*, eds., 1996).

[15] The significance of *avoiding disruption* to student learning has been regularly accepted as a sufficient basis for limiting students' exercise of certain constitutional rights. See, *e.g.*, *Tinker* v. *Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513 (1969), and its progeny. It is ironic that Petitioners and their *amici* seek in this case to limit students' constitutional rights to make way for a practice that *increases disruption* to student learning.

disruption of or interference with the school day and environment, especially when it involves removing students from the classroom and learning activities."[16]

Public schools are charged at the state and federal level with educating children in compliance with legislated benchmarks. Numerous pieces of legislation, including compulsory school attendance laws in every state,[17] underscore the importance of students' regular presence in the classroom, where teaching and learning occur. The federal government and state governments are raising educational expectations through legislation such as the No Child Left Behind Act, and increasing, rather than decreasing, the amount of time students spend in the classroom. It cannot be debated that schools must focus on educating children; detours from tailored educational plans for state interests unrelated to education -even for other valuable state interests— have little or no place in the school day absent exigent circumstances.

The case at hand demonstrates the utter lack of necessity for conducting such an intrusive, disruptive investigation at, and during, school. A child with special educational needs was taken out of her classroom with no contemporaneous explanation by school personnel for her removal (other than that

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[16] Br. for Nat'l Sch. Boards Ass'n *et al.* as *Amici Curiae* in Support of Pet'rs, *Camreta* v. *Greene* and *Alford* v. *Greene*, Nos. 09-1454 and 09-1478 (Dec. 17, 2010), 2010 WL 5168881, at *8.

[17] U.S. Dep't of Educ., National Ctr. for Educ. Statistics, Digest of Educ. Stats., tbl. 166, http://nces.ed.gov/programs/digest/d09/tables/dt09_166.asp (last visited Jan. 25, 2011).

some people wanted to talk with her). There was no emergency, as CPS had waited at least three days before detaining and interrogating S.G.—plenty of time for the CPS worker and/or law enforcement officer to obtain a warrant or a court order to interview the child, and with that, plenty of time to coordinate a more appropriate setting for what should have been a sensitive, careful interview about alleged sexual abuse.

III. Schools Are Far From Ideal Locations For Custodial Police/CPS Interrogations, From The Perspective Of Both The Child And The Investigation

As the National Association of Social Workers explains, it is important that child abuse interviews take place in an environment that is "neutral, private, informal, and free from distractions."[18] Several briefs supporting reversal of the Ninth Circuit's decision assert that schools are appropriate for custodial police/CPS interrogations because they are neutral environments in which children feel safe.[19] At first blush, this seems logical: for most children, schools are places in which they feel safe and unthreatened. In fact, feelings of safety and support may be accentuated for the most vulnerable

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[18] Br. for Nat'l Ass'n of Social Workers *et al.* as *Amici Curiae* In Support of Pet'rs, *Camreta* v. *Greene* and *Alford* v. *Greene*, Nos. 09-1454 and 09-1478 (Dec. 16, 2010), 2010 WL 5168877, at *30.

[19] *Id.* at *30-32; Br. of the Cook County Public Guardian as *Amicus Curiae* in Support of Neither Party and Suggesting Reversal, *Camreta* v. *Greene* and *Alford* v. *Greene*, Nos. 09-1454 and 09-1478 (Dec. 16, 2010), 2010 WL 5168876, at *26-27; Br. for Nat'l Sch. Boards Ass'n *et al.*, *Camreta* and *Alford* (Nos. 09-1454 and 09-1478), 2010 WL 5168881, at *9.

children. For children who are homeless, transient, or hungry, school is generally a stable place where they can get a hot meal, learn without fear, and seek help from supportive teachers and adults.

Even so, there are certain aspects of school, as experienced by a child, that counsel against using the schoolhouse as an outpost for custodial police/CPS interrogations. First, students can experience shame and embarrassment if they are interrogated at school, which in turn can negatively impact their education. Second, the nature of the school environment as a place in which students are not entirely free to move about at will, combined with the presence of law enforcement in a closed room, can add to feelings of confinement during a custodial police/CPS interrogation, leading students to feel trapped while being questioned about potentially traumatizing events. And third, the natural hierarchy of authority in the school environment—where students are generally submissive to teachers and authority figures—will be accentuated by custodial police/CPS investigations on school grounds, which can lead to greater suggestibility in children being interviewed.

A. Custodial police/CPS interrogations at school can embarrass and traumatize children, ruining their experience of school as a safe space.

The experience of being pulled out of the classroom in front of peers, by an authority figure, is embarrassing for any young child. As anyone who has ever attended public school knows, this signals both to the student being pulled out and to the class that something is wrong: the student misbehaved,

the student has a problem, the student's parents have a problem, and so on. Experiences causing a student shame and embarrassment can interfere with learning:

> For students to place a priority on learning, they must feel safe from both physical danger and embarrassment. Fear of physical harm and fear of embarrassment often have the same effect. Students should not have to worry that a lack of skills or knowledge *or an embarrassing fact about their private lives might be exposed*.[20]

Being pulled out of class and then undergoing traumatic questioning at school about possible sexual abuse would likely embarrass a child of any age. Unclear about the role of the police officer or CPS worker conducting the investigation on school grounds, a child could easily conclude that the nature of the interview—questions about sexual abuse—and any private information she shared, would be conveyed to teachers, and potentially to other students. The interrogated student may also worry about answering questions from peers: "What was that police officer talking to you about for so long?" A uniformed police officer appearing in a classroom to get a student for questioning would certainly heighten the potential shame and embarrassment for any student subject to that experience.

With respect to homeless students in particular, the McKinney-Vento Homeless Assistance Act ("McKinney-Vento Act") recognizes the vulnerability

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[20] Spence Rogers & Lisa Renard, *Relationship-Driven Teaching*, 57 EDUC. LEADERSHIP 34, 35-36 (Sept. 1999) (emphasis added).

of these children and specifically requires that homeless students be protected from becoming "stigmatized." 42 U.S.C.A. § 11432(e)(3)(C)(i)(III)(dd) and (g)(1)(J)(i) (West 2010). The McKinney-Vento Act urges that any practices which "may act as a barrier to the enrollment, attendance or success in school of homeless children and youths" be changed. *Id.* § 11431(2). Embarrassing and emotionally upsetting custodial police/CPS interrogations are precisely such practices.

Although schools may be *physically* "safe" places for custodial police/CPS interrogations, the experience of being questioned about sexual abuse by strangers changes that safe space into an *emotionally* unsafe space. S.G.'s school-based interrogation left her so traumatized that she was physically ill that evening. Br. for Resp'ts at 4, *Camreta* and *Alford* (Nos. 09-1454 and 09-1478). And not only did S.G. suffer the initial embarrassment and trauma of the interrogation, but going forward she will have the distinct memory of being removed from her classroom for a traumatizing event, being left with a law enforcement officer and another adult stranger in a private office, being questioned about sensitive topics (whether true or not), and feeling that she had to answer "yes" to questions she was repeatedly asked. S.G.'s fear, shame, and embarrassment stemming from that event are now linked to her school experience.

B. Children may feel trapped in school-based, custodial police/CPS interrogations.

To some extent, schools are confined environments that students are not free to leave of their own accord, even though they experience some freedom of

movement during recess, lunchtime, or with permission of teachers. Confinement to the classroom, the school building, or the schoolyard makes sense when imposed to facilitate positive learning activities and social experiences that enhance children's education. But confinement at school for purposes unrelated to education can be confusing for children, or worse, as in S.G.'s case, emotionally disturbing and traumatizing.

Courts recognize the confines of the school environment. "[U]nemancipated minors lack some of the most fundamental rights of self-determination—including even * * * the right to come and go at will." *Vernonia Sch. Dist. 47J* v. *Acton*, 515 U.S. 646, 654 (1995); see also *Couture* v. *Bd. of Educ. of Albuquerque Pub. Sch.*, 535 F.3d 1243, 1250-1251 (10th Cir. 2008) ("We must think about seizures differently in the school context, as students are generally not at liberty to leave the school building when they wish."); *Wallace by Wallace* v. *Batavia Sch. Dist. 101*, 68 F.3d 1010, 1013 (7th Cir. 1995) ("Once under the control of the school, students' movement and location are subject to the ordering and direction of teachers and administrators."); Br. for Pet'r Camreta at 31, *Camreta* (No. 09-1454).

The fact that children are somewhat confined at school increases the chance that they will believe they are not free to leave a school-based custodial police/CPS interrogation, no matter how much pressure they are facing, how uncomfortable they feel, or how traumatizing the experience. Indeed, this was the very harm suffered by S.G. when she was brought to the conference room near the principal's office. S.G. did not think she was allowed to leave the

interrogation room without permission, and she was "too scared to ask [Camreta] any questions." Br. for Resp'ts at 2, *Camreta* and *Alford* (Nos. 09-1454 and 09-1478). She was worried that she would not be allowed to leave even to catch the school bus home at the end of the day, which prompted her to begin lying to the CPS worker in hopes that she would gain her freedom from the interrogation. *Id.* at 3-4.

Had S.G. been "confined" in the traditional way in a classroom at school, she would have felt free to ask to use the bathroom, get a glass of water, or otherwise move about with permission from her teacher. She would have had no fear whatsoever that her teacher would cause her to miss her school bus home. But unclear about the role of the strangers in the interrogation room—one of whom had a visible firearm—S.G.'s sense of confinement was heightened in a traumatizing way and ultimately led her to lie. This, in turn, compromised the integrity of the investigation—harming every party involved. The inherent confines of public school combined with the presence of law enforcement and CPS left S.G. feeling trapped—just one emotional aspect of the trauma she experienced.

C. Children are more suggestible in the school environment.

Students and teachers usually share a "commonality of interests," *T.L.O.*, 469 U.S. at 350 (Powell, J., concurring), and develop a level of trust and understanding with one another. At the same time, students operate within a natural hierarchy of authority at school, recognizing from a very young age that teachers and school administrators are to be obeyed, lest they face disapproval or discipline.

Teachers aim to instill in students a desire to please, in hopes that their encouragement and support will motivate students toward educational success and advancement. When custodial police/CPS interrogations happen in the school context, children may feel additional pressure to please or comply with police officers and other adult figures, either because they desire the type of positive affirmation teachers provide, or because they fear discipline or disapproval for failure to meet perceived expectations. This heightened "suggestibility" can compromise the accuracy of children's statements.

In general, children tend to exhibit conformity to authority figures. "Adolescents are more likely than young adults to make choices that reflect a propensity to comply with authority figures" when being interrogated by the police.[21] This propensity is likely heightened in the school environment. Children's tendency to comply with authority figures, especially in the school setting, makes them more susceptible to answering questions the way they perceive the adult questioner desires them to answer, instead of answering truthfully. On account of their age, and the attendant intellectual and emotional immaturity, children are more impressionable than adults and thus more susceptible to persuasion by

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[21] Thomas Grisso *et al.*, *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. HUM. BEHAV. 333, 357 (Aug. 2003); see also II LAWRENCE KOHLBERG, ESSAYS ON MORAL DEVELOPMENT: THE PSYCHOLOGY OF MORAL DEVELOPMENT 172-173 (1st ed. 1984).

authority figures.[22] This danger is greater for younger children.[23]

Children as young as three years old are involved in the public education system. The IDEA requires that states provide early intervention services to infants and toddlers with disabilities. 34 C.F.R. § 303.12 (2010). And Head Start, a national program, provides grants to private and public organizations, including public schools, for educational and developmental services to children from economically disadvantaged families.[24] In Chicago, for example, Head Start services are provided, in part, by public schools.[25] Preschoolers in particular are deferential to adults' beliefs and are "more likely than older children and adults to confuse what they have been told with what they have experienced."[26] Nothing in the Petitioners' briefs suggests a low-end age limit that police and CPS investigators would not cross if given the freedom by this Court to conduct

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[22] G. Richardson *et al.*, *Interrogative Suggestibility in an Adolescent Forensic Population*, 18 J. ADOLESCENCE 211, 215 (1995).

[23] BOHANNAN *ET AL.*, OREGON DEP'T OF JUSTICE, OREGON INTERVIEWING GUIDELINES 148 (2004), http://www.doj.state.or.us/crimev/pdf/orinterviewingguide.pdf.

[24] U.S. Dep't of Health & Human Servs., About Head Start, http://eclkc.ohs.acf.hhs.gov/hslc/About%20Head%20Start (last visited Jan. 25, 2011).

[25] Chicago Public Schools, Head Start Child Development Program, http://www.cps.edu/Schools/Preschools/Pages/Headstartchilddevelopmentprogram.aspx (last visited Jan. 25, 2011).

[26] Erna Olafson, *Children's Memory and Suggestibility*, in INTERVIEWING CHILDREN ABOUT SEXUAL ABUSE 10, 20 (Kathleen Coulborn Faller, 2007).

warrantless, non-exigent custodial CPS interrogations without parental consent.

Further, studies have shown that when children are intimidated, they are more suggestible.[27] "Intimidating" describes S.G.'s experience exactly. And S.G.'s experience provides a paradigmatic example of a child's suggestibility in the face of authority figures exercising control over a young child on school grounds: she lied and said what she thought the CPS worker wanted to hear. Br. for Resp'ts at 4, *Camreta* and *Alford* (Nos. 09-1454 and 09-1478).

IV. Parents Have No Expectation That Their Children Will Be Subject To Warrantless, Custodial Police/CPS Interrogations At School Without Their Consent

Parents have a deeply rooted, constitutionally protected interest in the "care, custody, and control" of their children. *Troxel* v. *Granville*, 530 U.S. 57, 65 (2000). That right extends to the decision whether to educate their children within, or outside, the public school system. *Meyer* v. *Nebraska*, 262 U.S. 390, 399 (1923); *Pierce* v. *Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 534 (1925).

When parents send their children to public school, they accept that during school hours the school will exercise a significant degree of supervision and control over their children *for the purposes of education*. Contrary to Petitioner Camreta's contention, however, it does not follow that when parents send their children to public school, they

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[27] *Id.* at 27.

surrender them to the authority of the government for any and every governmental interest, no matter how tangentially related (or entirely unrelated) to their children's education. See Br. for Pet'r Camreta at 33, *Camreta* (No. 09-1454) (stating that, because school teachers are mandatory reporters, parents "know that * * * those charged with investigating reports of child abuse will come to the school to interview the child"). Nor would parents expect such an expansive surrender of their rights to the care, custody, and control of their children, in light of the rights parents do retain, under federal and state law, in respect to what happens to their children at school. The mere fact that parents know about teachers' obligations to report abuse to outside authorities *in no way* gives rise to the expectation that these outside authorities will then conduct an investigation inside the school.

Although parents may not have the right to dictate detailed aspects of the education their children receive in public school, the reality is that states grant parents expansive oversight and control over their children's education and require that schools actively engage parents. Ohio law, for example, tasks local school boards with developing policies that "build consistent and effective communication between the parents and foster caregivers of students enrolled in the district and the teachers and administrators assigned to the schools their children or foster children attend," giving parents the opportunity to be "actively involved" in their children's education, and stressing the "importance of the involvement of parents and foster caregivers in directly affecting the success of their children's or foster children's educational efforts."

OHIO REV. CODE ANN. § 3313.472 (West 2010). Some states, including Oregon, require that schools allow parents "an opportunity to examine the instructional materials to be used in any class, course, assembly or school-sponsored activity." OR. REV. STAT. ANN. § 336.465(1)(a) (West 2010).

Federal statutes likewise grant parents the right to oversee and/or control aspects of their children's education. The IDEA, for instance, requires that schools notify parents of children with disabilities of changes in the children's individualized educational programs. 20 U.S.C.A. § 1415(b) (West 2010). It also prevents the sharing of information without parental notification, see *id.* § 1414, which means that *any* questioning of a child with special needs should only occur after parental notice and an opportunity to consent, so that the child's special needs are accommodated in the interview itself. This requirement makes sense: an interview or interrogation of a child with special needs is potentially more damaging (both emotionally and physically) than it might be for a child without special needs.

Other state and federal laws provide parents with a similar prerogative over what happens with their children during the school day. The Protection of Pupil Rights Amendment prevents students from being forced to participate, absent parental consent, in a survey or other type of analysis that deals with a wide range of topics, including political affiliations, sexual behavior, and religious practices. 20 U.S.C.A. § 1232h (West 2010). The McKinney-Vento Act accords parents the right to choose school placement for homeless students who no longer can establish

school residency, 42 U.S.C.A. § 11432(g)(3)(B), and the right to challenge local educational agency decisions, *id.* § 11432(g)(3)(E). And the ESEA requires that schools receiving funds under Title I—the largest federal education program—develop the detailed elements of their required plan for improving education jointly with the parents of the school, in a manner spelled out in the school's parent involvement policy, which in turn (i) must be jointly developed with and approved by the schools' parents, and (ii) must delineate how the school will carry out detailed requirements for ensuring that parents receive sufficient information, training, and assistance to participate. 20 U.S.C.A. § 6318 (West 2010).

Parents also have a right under federal law to protect the privacy of their children's educational information. The Family Educational Rights and Privacy Act ("FERPA") requires schools to give parents access to their children's educational records and affords great privacy protections to parents and students. 20 U.S.C.A. § 1232g (West 2010), amended by Pub. L. 111-296, 124 Stat. 3183 (2010). With limited exceptions, FERPA protects children's educational records from being disclosed to third parties without parental consent. *Id.* § 1232g(b)(1).

Legislated parental rights extend past mere notification. For many school programs and activities, parents must proactively approve their children's participation, or alternatively, they have the right to remove their children from the activity. For example, states may require written parental or guardian consent prior to allowing a child to participate in clubs at the school. *E.g.*, UTAH CODE

ANN. § 53A-11-1210 (West 2010). California law allows parents to withhold consent for their children to be given a physical examination in school. CAL. EDUC. CODE § 49451 (West 2010). And it is nearly universal that parents must provide permission for their children to leave school grounds for field trips.

Another area of widespread recognition of parental oversight is what children learn about human sexuality. In many states and school districts, parents and guardians have the affirmative right to remove their children from courses on human sexuality. Other states require that parents be notified in advance before implementing human sexuality curricula. See, *e.g.*, *Parker* v. *Hurley*, 514 F.3d 87, 91 (1st Cir. 2008). For example, Oregon school districts must "[i]nform parents or guardians *in advance* of any instruction on human sexuality or human immunodeficiency virus and give them an opportunity to review materials" and remove their children from class. OR. REV. STAT. ANN. § 336.465(1)(b) (West 2010) (emphasis added). See also, *e.g.*, CAL. EDUC. CODE § 51938 (West 2010); MICH. COMP. LAWS ANN. § 380.1507(3) (West 2010); TEX. EDUC. CODE ANN. § 28.004(i) (Vernon 2009); David Rigsby, *Sex Education in Schools*, 7 GEO. J. GENDER & L. 895, 897-898 (2006). A handful of states require that a parent must provide written consent before his or her child may be given any instruction relating to human sexuality. See ARIZ. REV. STAT. ANN. § 15-102 (2010);[28] NEV. REV. STAT. § 389.065(4) (West 2010); UTAH ADMIN. CODE § R277-474-1(H) (2010).

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[28] Note that Arizona's law allows parents to withdraw their children from "any learning material or activity" they find objectionable. ARIZ. REV. STAT. ANN. § 15-102(A)(3).

In short, both federal and state statutes as well as the rules and practices of local school districts—recognize that schools should inform parents of what is happening to their children while at school and obtain parental consent for aspects of their children's education that may cause concern to parents. This makes sense: parents have an overwhelming interest in ensuring the safety and well-being of their children—as they perceive it—whether their children are at home or at school. The Ninth Circuit recognized that "parents have an exceedingly strong interest in directing the upbringing of their children, as well as in protecting both themselves and their children from the embarrassment and social stigmatization attached to child abuse investigations." *Greene*, 588 F.3d at 1015-1016. This interest does not evaporate when children walk through the doors of a public school.

Contrary to Petitioner Camreta's assertion, parents would not naturally understand that "those charged with investigating reports of child abuse will come to the school to interview the child" without parental consent, probable cause, or a warrant. Br. for Pet'r Camreta at 33, *Camreta* (No. 09-1454). Rather, parents would conclude that such an important, potentially traumatizing occurrence would *require* their consent, especially when their consent is required or sought for their children's field trips, extracurricular activities, physical examinations, sex education, and other significant school based events.

V. Relaxing Constitutional Requirements For Police And CPS Agencies In Public Schools Will Give Them Incentives To Bypass Fourth Amendment Requirements

Child welfare agencies are overburdened, underfunded, and poorly staffed.[29] "On a nationwide level there is general agreement that the CPS system is performing poorly."[30] In light of the scarce resources and overworked staff in these important agencies, it is easy to conceive of CPS workers (along with police) using public school resources—such as classrooms, offices, and even educators themselves—to ease some of their budgetary burden.

The incentive to conduct investigations at school is even greater, however, if doing so would eliminate the time, expense, and burden associated with obtaining a warrant—and the practical difficulty of having to give advance warning to the parents who are the very target of the investigation. As a matter of common sense, if Petitioners were to prevail, an important and necessary step in the typical investigation process—convincing a court of probable cause in order to secure a court order to investigate—would regularly be circumvented. Indeed, there is evidence that this practice exists already: one CPS official said in an interview that CPS rarely goes to children's homes for this reason.[31]

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[29] Sarah H. Ramsey, *Children in Poverty: Reconciling Children's Interests with Child Protective and Welfare Policies*, 61 MD. L. REV. 437, 444 (2002).

[30] *Ibid.*

[31] Doriane Lambelet Coleman, *Storming the Castle to Save the Children: The Ironic Costs of a Child Welfare Exception to the*

The National Association of Social Workers' *amicus* brief exposes how school-based custodial police/CPS interrogations provide an easy route to avoid traditional constitutional requirements (i.e., protections for those subject to interviews or investigations). "[A]n in-school interview allows social workers to evaluate the child promptly while *avoiding the constitutional problems* inherent in obtaining access to the family home."[32] Those constitutional "problems" may look like "procedural hurdles" to the National Association of Social Workers, but from the perspective of the individuals and families involved, they are critical protections guaranteed by the U.S. Constitution. "[A]lthough the crime of child sexual abuse 'may be heinous * * * [this] does not provide cause for the state to ignore the rights of the accused or any other parties.'" *Greene*, 588 F.3d at 1017 (quoting *Wallis* v. *Spencer*, 202 F.3d 1126, 1130 (9th Cir. 2000)).

If law enforcement and CPS workers can conduct investigations on school grounds without completing the requisite procedural steps and obtaining court approval based on probable cause, they will naturally prefer school-based investigations over community-based investigations for a variety of obvious reasons. Should this practice be sanctioned by this Court, custodial police/CPS interrogations at school will become the rule instead of the exception, further increasing burdens on schools and further chipping

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Fourth Amendment, 47 WM. & MARY L. REV. 413, 438 and n.58 (2005-06).

[32] Br. for Nat'l Ass'n of Social Workers *et al.*, *Camreta* and *Alford* (Nos. 09-1454 and 09-1478), 2010 WL 5168877, at *31 (emphasis added).

away at the constitutional rights of children and their parents.

CONCLUSION

The government does not have, as a matter of right, unfettered access to a child just because the child enters a public school building. At the same time, the protections afforded parents in the Constitution in directing the upbringing of their children and protecting their children from harmful and traumatizing events do not vanish when children set foot in school. For all these reasons, and for the reasons articulated by Respondents, the judgment of the Ninth Circuit should be affirmed.

Respectfully submitted.

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